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Send Change of Address Notices to: The State Bar of California Attn: Membership Records, 180 Howard Street San Francisco. CA 94105-1639

Associate Members of this Section (those who are not members of the State Bar of California) should send notices to the attention of Carol Banks. International Law Section.

The Section Newsletter will now accept paid advertisements. Please contact the Editor for further information.

In its printed form, this volume also included the roster for the International Law Section Executive Committee.



Section Activities

LETTER FROM THE CHAIR

Steven L. Smith, O'Melveny & Myers

There are many valid reasons for being an active member of the International Law Section of the State Bar. The Section's superb programs, from its annual two-day conference to its seminars and other educational offerings, allow members to keep abreast of international legal issues and developments while satisfying the State Bar's resuscitated MCLE requirement. The Section's programs and other activities also provide an excellent opportunity to network among California's leading international practitioners and in-house counsel and to make and renew friendships in a Section known for its camaraderie and collegiality. This year; the Section will be exploring opportunities to develop closer ties to select foreign bar associations to expand further the programming and contacts available to our members.

The Section also provides an important public service beyond its educational mission by promoting the value of internationalism over isolationism, and by providing a forum for interchange with international lawyers in other countries. The internationalization of California's economy places ever increasing demands on California's international lawyers. There is a need, now more than ever; to have a section devoted to the distinct characteristics of the international practice here in California.

After a year in which the International Law Section and its programs were compromised by the uncertainty surrounding the State Bar and MCLE, I am pleased to report that the Section is planning a wide range of exciting activities and programs for the year 2000.

1 .The International Law Weekend.

Next year's International Law Weekend will focus on International Commercial Arbitration in the Asia-Pacific Region and is tentatively scheduled for early fall. The conference will include panels on negotiating and drafting international dispute resolution provisions, arbitrating international intellectual property disputes, ADR and global internet disputes, international arbitral institutions active in the Asia-Pacific Region, and the enforceability of arbitration awards in key Asian jurisdictions.

2. The International Practitioner.

The International Practitioner is the Sections flagship publication and focuses on articles of practical significance to the Sections members. The next issue, which should be hitting your desk soon, will contain articles on The Limits of United States Trade Law Remedies -- An Economic Commentary; Introduction To And Overview of Cross-Border Insolvency Issues Involving Foreign Debtors in The United States; Foreign Ownership of United States Aerospace and Defense Companies; Overview of Middle Eastern Anti-Bribery Rules; and Discovery of Evidence Abroad: U.S. Perspectives on International Treaties and Litigation. We will also be publishing an issue devoted to international commercial arbitration in the Asia-Pacific Region as a follow-up to the International Law Weekend on that topic.

3. Section Web Site.

We are significantly enhancing the Section's web site to provide significant new services and benefits to our members. As part of that effort we will be posting back issues of *The International Practitioner* on the site and providing a comprehensive set of international research links, a calendar of events, Section announcements, foreign-bar hyperlinks, and Section member information to allow communication among members on practice-related and other issues.

4. World Affairs Council Programming.

This year, for the first time, we will be co-sponsoring programs every quarter or so with the World Affairs Council of Northern California on topical issues of an international legal character, including matters of general interest before the International Court of Justice in the Hague and the United Nations Compensation Commission handling claims arising out of the Gulf War.

5. Law Student Program.

This year we will be reviving our tradition of having a program for law students, at a separate Northern and Southern California venue, to discuss career opportunities in international law. The programs have been very successful in the past and provide the Section with an opportunity to meet future practitioners and potential members and to help guide their way to an international practice.

6. Newsletter. The Newsletter is getting a facelift and will focus more on current events and membership networking. It will include a "People on the Move" section where members can post short news items, and another new section where we will interview and profile section members. We will also be delivering the Newsletter in electronic format. Please let me know if you are interested in assisting with the Section's work over the coming year or have suggestions on how we can better serve your needs as we enter the new millennium.



Section Activities

SECTION ANNOUNCEMENTS

SUBCOMMITTEE CHAIRS

The chairs listed below have substantial experience with the Sections activities in the areas specified, and interested members should contact them with any comments or questions. Suggestions to add subcommittees or change activities of the present subcommittees should be directed to the Section Chair David Hirson.

Immigration Law -- David Hirson
Membership -- Majda Barazutti
Newsletter -- Thomas R. Bennett
Practitioner -- David Teichmann
Programs -- Michael Tyler
Relations with Foreign Bars -- Fred Rodriguez

INTRODUCE YOURSELF TO YOUR FELLOW ILS MEMBERS THROUGH THE NEWSLETTER

Starting with the next issue, the Newsletter will be undergoing an editorial change. In lieu of short articles and student-written summaries of international legal events, we will be focusing on promoting connections among the ILS members. Accordingly, we ask that you send us a short biographical description of yourself and a description of your practice, and explain how you came to be interested or involved in the international practice of law. Based on the submissions received, the editors will select a handful each month for follow-up interviews to be used in preparing a "member profile." Several member profiles (including photographs) will be published in each issue. (We encourage readers to detach and retain the profiles of members who may be interesting or useful to meet.) While we welcome all submissions, please note that members of the Executive Committee will not be eligible, and members of the same firm may not be featured in the same issue of the Newsletter.

CHECK OUT OUR HOME PAGE

www.calbar.org/ils

And be sure to mark this address in your Hot List. On our home page, you will find membership information; current and past issues of this Newsletter; and the telephone, e-mail, and fax numbers for Executive Committee and Subcommittee members.

You will be able to run to the Section's home page to see if there are any up-to-date announcements while waiting for your next issue of the Newsletter, or even to find information about an event you saw in the Newsletter when you cannot locate your copy. If you have any other ideas for the home page, we would love to hear them.

Questions or comments may be directed via e-mail to Margaret Hastings-Hale, Sacramento, tel. 916-321-4500,

TELL US WHERE YOU ARE AND WHAT YOU ARE DOING

Consistent with our efforts to maintain close contact with our members and to promote contacts among members, we ask that you take a moment and provide us with updated contact information. (Please feel free to print out and fax back the form included with the Newsletter.)

Likewise, please let the Newsletter know when you have changed employment and when you are involved in significant international legal matters. We will publish such information in the Newsletter on a space-available basis.

INTERNATIONAL LAW SECTION MEMBERS Return by fax to 415/538-2368

In order to receive International Law Section new information and updates (via fax and e-mail), please complete and return this form. Your fax number and e-mail address may not be current in the State Bar records. This makes it difficult and costly for us to contact you.

In order to have your most up-to-date and accurate information, please fax back this form -- even if you previously updated your records.

Many thanks from the International Law Section Executive Committee.

Name
Bar Number
Please update my official membership record:
Fax
E-mail Address
Signature
Date

Return by fax to: International Law Section (415) 538-2368



Current Developments

VIABLE OPTIONS AS THE H-1B CAP FOR FY2000 LOOMS AHEAD

David Hirson, Esq.
Hirson Wexler Perl & Stark, A Professional Corporation

With the start of the new INS fiscal year 2000 on V V October 1, 1999, the INS has been busily adjudicating H-IB Petitions that had been filed in the months following the previous fiscal year's H-IB cap being reached. The INS California Service Center recently indicated at a local Bar meeting that INS headquarters were estimating that approximately 22,000 H-IB Petitions had already been adjudicated at the four INS Regional Service Centers, and that about 14,000 were still pending adjudication. This means that about 78,000 H-IB visas out of the annual allotment of 115,000, are still available for FY2000. INS comments in this regard was that employers should plan ahead and not delay in filing cases that will be counted toward the H-IB cap.

It is therefore imperative to inform corporate clients, especially in the hi-tech industry, who rely on the availability of specialized foreign employees, of these latest developments in the continuing H-IB saga.

The matter has recently been further compounded by the disclosure by the INS that it may have mistakenly issued some 10,000 to 20,000 H-IB petition approvals in excess of the 115,000 cap for FY1999. It is unclear as yet as to how this latest revelation will affect the INS' count for FY2000, however, there has been some speculation that the Service may be considering charging the alleged over-count against the FY2000 cap.

From a practical point of view, these latest statistics present various options to employers who require foreign national employees to perform professional services for them in the United States. Firstly, the message from the INS is clear: do not delay filing an H-IB Petition for a candidate even if they currently hold some other employment-authorized visa status, such as F-I Optional Practical Training, if it is foreseeable that the employee may be required for a period longer than that which remains on his or her current visa and that visa will expire within the year.

This means that employers may have to make determinations about the foreign national employee's future employment with the company sooner than may have been originally anticipated. It also means that employers who in the past have been able to acquire an extra year of the employee's services in addition to the up to six years in prospective H-IB status while the employee completed one year of optional Practical Training with the employer, may no longer be able to count on that extra year since delays in filing an H-IB Petition may result in the H-IB cap being reached prior to Petition adjudication.

Secondly, planning ahead has become critically important for the employer who will only require the foreign national's services later on in the year at which time the H-IB cap may already have been reached.

The Code of Federal Regulations provides that a Petition may not be filed or approved earlier than six months before the date of actual need for the foreign national Beneficiary's services. This means that an employer who requires the services of a particular foreign national in the near future and who was planning to file a case at a slightly later stage should rather not delay in filing, especially if the position is to be taken up with the company within six months time. In such a case, the Petition may be filed with a start date for six months time, and in so doing, once approved, the employer has already secured H-IB status for the prospective employee to be activated when the employer needs his or her services six months down the line thereby remaining a step ahead of the H-IBcap.

For those employers who are introduced to their candidates only after the FY2000 cap is reached, there may be alternative employment-based nonimmigrant visa options that may be utilized in lieu of the H-IB. Depending on the circumstances, the foreign national's educational and professional experience and his or her nationality, the following visas may be a temporary alternative to applying for an H-IB visa until the next fiscal year when the new allotment of H-IB visas again become available: TN, L- IA/B, H-3, J-I, E-2. These alternatives may not be as appropriate as the H-I visa, but may offer some flexibility in an otherwise inflexible system.

This information is provided by the immigration law firm of Hirson Wexler Perl & Stark. We welcome any immigration inquiries at dhirson@hwps.com.



Current Developments

NEWS FROM AROUND THE WORLD

Editor: John J. Stifter Student Reporter: Susan L. Andrews

PUBLIC INTERNATIONAL LAW

Tadic Appeal Denied by International Criminal Tribunal for the Former Yugoslavia

The International Criminal Tribunal for the Former Yugoslavia denied an appeal by Dusko Tadic, the first person tried by an international war crimes tribunal since Nuremberg. Tadic sought to dismiss 31 counts of crimes against humanity and violations of the laws or customs of war. The decision could affect existing war crimes investigation in the Balkans because it also upheld the prosecution's cross-appeal that the Bosnian War was an international armed conflict, thereby reinstating Tadic's murder and cruel treatment charges in violation of the Geneva Conventions. The Tribunal can review other Geneva Convention violations, including those alleged against Slobodan Milosevic and his regime because the Bosnian War has now been held to be an international conflict.

Fifth U.S. Circuit Court of Appeals Approves Rwandan's Extradition Absent Treaty

The 5th Circuit Court of Appeals held that Elizaphan Ntakirutimana could be extradited despite the historical practice that a treaty signed by the president and ratified by two-thirds of the Senate precedes extradition. Ntakirutimana, former head of the Seventh Day Adventist Church in Rwanda, was indicted in 1996 for allegedly participating in the genocide of ethnic Tutsis. The Court held that his extradition was authorized by a 1996 Congressional-Executive Agreement, Public Law 104-106, implementing a 1995 agreement by the U.S. president to extradite indictees to the International Criminal Tribunal for Rwanda. Those critical of the decision view the treaty practice as a constitutional requirement, while supporters see this decision as establishing precedent fostering cooperation between nations and international tribunals.

INTERNATIONAL LABOR

American Company Pays \$30 Million to Families of Killed Mexican Maquiladora Workers

New York based clothing marketer and manufacturer, Salant Corp., settled *Maria Dolores Rodriguez Olvera et al. v. Salant Corporation* for \$30 million. Plaintiffs were the families of 14 Mexican citizens who were employed by the company's Mexican subsidiary, Maquiladora Sur, and were killed in a bus crash while being transported to the company's blue jean factory in Mexico. Plaintiffs' counsel argued that Texas law should be applied because virtually all of the control and management decisions concerned were made by company executives in

Texas. Evidence showed that the bus was unsafe and that the bus driver, who was also killed in the crash, had no driver's experience or training. The settlement is expected to alert American companies that compromising on Maquiladora workers' safety will increase their liability exposure.

Federal jury Awards Wrongful Death Verdict to Illegal Alien

A federal jury in Atlanta, Georgia, awarded the parents of deceased illegal immigrant, Fabian Gonzales Zaragosa, 17, nearly half a million dollars in a wrongful death suit against roofing company, Coker & Associates of Alabama. Gonzales had been working only two days for stucco contractor, Decor, when an unidentified worker of Coker & Associates dropped a 60-pound felt roll from the construction site roof top, instantly killing Zaragosa who was wearing a hard hat. The plaintiffs were not permitted to claim pain and suffering or punitive damages because Zaragosa's death was argued by defense counsel to have been instantaneous.

INTERNATIONAL EQUITY

U.S. Supreme Court Limits Federal Judges' Power to Restrain Asset Transfers

In *Grupo Mexicano de Desarrollo, S.A., et al. v. Alliance Bond Fund, Inc., et al.,* the U.S. Supreme Court limited federal judges' authority to halt asset transfers. The Court held that the Second Circuit District Court's issuance of a preliminary injunction preventing Grupos Mexicano from disposing their assets before a judgment fixing the debt was reached, improperly interfered with the debtor's use of his property. Therefore, the preliminary injunction was beyond the District Court's equitable power. The Court also held that enjoining the debtor's disposition of his property in favor of a non judgment creditor is incompatible with the Court's cautious use of equity, despite the continuing success of the Mareva injunction codified in England.

FOREIGN & COMPARATIVE LAW EUROPE

European Court of Human Rights Fines France for Torture

The European Court of Human Rights condemned France for torture under Article 3 of the European Convention on Human Rights, arising from French police's physical and mental violence toward Ahmed Selmouni, a Moroccan and Dutch national, while in police custody. The Court also found under Article 6 that France failed to timely address Selmouni's complaints, as seven years had passed between the time of complaint and the officers' convictions. This is the first time the Strasbourg-based Court has found a European Union Member State guilty of torture. Selmouni was convicted on drugs charges and sentenced to a 13-year prison term. The four officers were sentenced to jail terms of approximately four years; however, the terms were reduced to suspended sentences.

French Scientific and Technical Research Tax Deduction Is Contrary to Community Law

The Court of Justice of the European Communities held that a tax provision allowing undertakings to deduct research expenses incurred only in the taxing Member State is contrary to Community law. Article 12 of an Order of the French Government allowed undertakings to deduct scientific and technical research costs carried out in France. The Community principle of freedom of establishment permits business through branches, agencies or subsidiaries located in other Member States, and principle of equality of treatment prohibits discrimination on the basis of nationality or a company's seat. France's justification was to promote effective fiscal supervision of such companies. However, the Court found that such legislation, preventing subsidiaries from submitting evidence of their research outside France, could not be justified.

State Aid from Irish Government to Irish Steel Is Compatible with Community Law

The Court of First Instance of the European Communities upheld the Commission's authorization of State aid from Ireland to Irish Steel for restructuring and privatization. Although the Community State aid code does not address aid for restructuring, the Court held that the Commission may exercise its discretion under Article 95 of the European Coal and Steel Community Treaty to determine whether unlisted aid is consistent with Treaty objectives. The Court also held that the Commission did not commit manifest error of assessment in

considering the relevant region's economic situation as a material consideration in its decision. Finally, the Court held that the Commission must only require counterpart measures that are necessary to thwart distortion of competition caused by the aid.

Mere Aural Similarity May Create Confusion Between Trademarks

In *Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel BV*, the Court of Justice of the European Communities ruled that mere aural similarity between trademarks may create confusion under Article 5 (1) (b) of First Council Directive 89/104/EEC of 21 December 1988 to approximate trademark laws of the Member States. Confusion is more likely the more similar the goods or services covered and the more distinctive the earlier mark. Determining a mark's distinctiveness necessitates assessing the mark's identification to a particular undertaking, including the inherent characteristics of the mark and whether the mark describes the goods or services for which it has been registered.

Summary Payment Orders May Be Prohibited by National Legislation

In *ED Srl v. Italo Fenocchio*, the Court of Justice of the European Communities ruled that national legislation which excludes summary payment orders to be served on a debtor outside the creditor's Member State is permissible under Article 34 of the EC Treaty (amended to Article 29 EC). While Article 34 prohibits national legislation that is liable to hinder trade between Member States, the Court found that the possibility that Italian nationals would hesitate to sell goods to purchasers established in other Member States is too uncertain and indirect to violate that provision of Community law.

UNITED KINGDOM

Lloyd's Suit Dismissed for Lack of Diversity Jurisdiction

A N.Y. judge dismissed *Allendale Mutual Insurance Co. v. Excess Insurance Co. Ltd.* after refusing to reconfigure the case to create diversity jurisdiction. Allendale had sued Excess, 16 London Market Companies and 36 Lloyd's of London syndicates for wrongful refusal to pay a claim, failure to investigate the claim in good faith and breach of a forum-selection clause. The judge found that diversity of citizenship failed because 19 of 36 syndicates included underwriters from plaintiffs home state, and defendants' proposals for reconfiguring the suit appeared to overstep jurisdictional guidelines of the Supreme Court and Court of Appeals. The decision effectively nullifies Lloyd's service-of-suit clauses designed to facilitate U.S. policyholders' ability to enforce their policies in the U.S.

Bermuda's Anti-Fast Food Law Upheld by British Privy Council

Bermuda's highest court rejected Grape Bay Ltd.'s appeal to strike down Bermuda's 1996 Prohibited Restaurants Act that barred Grape Bay from opening a McDonald's. The Act has also prevented the opening of Pizza Hut and Taco Bell outlets. Former legislator Anne Cartwright DeCouto led the opposition to Grape Bay, stating that the decision was in Bermuda's best interests. Other fast food opponents claim that fast food restaurants would impair the island's Old World image.



Current Developments

INTERNATIONAL ACTIVITIES OF INTEREST

ABA International legal Exchange Program (ILEX)
March 25-April 2, 2000
Brazil

ILEX invites members of the State Bar of California to participate in a briefing trip to Brazil, March 25 through April 2. The first portion of the trip will be spent in Sao Paulo and will include visits to the stock exchange and the governors palace, as well as briefings on different aspects of doing business in Brazil. There will be meetings with representatives of various government agencies, stock and commodity exchanges, leading companies and law firms in Sao Paolo, as well as the national bar association. In Brasilia, the delegation will visit the Brazilian Supreme Court and tour the Brazilian Congress, among other activities. On March 30, the delegation will proceed to Rio de Janeiro and will participate in a luncheon with the governor; a visit to Rio de Janeiro courts, Brazils national oil company, and a dinner party at the residence of Mr. and Mrs. Siqueira Castro.

The deadline to register is January 10, 2000. If you are interested in this unique trip and would like to receive a full-detailed brochure, please contact Jesus V. Izquierdo, International Projects Administrator: Tel. 202-662-1670; Fax 202-662-1669; e-mail: jizquierdo@staff.abanet.org.

ABA 2000 Annual Meeting New York, London, Dublin July 8-22, 2000

The Year 2000 Annual Meeting of the ABA will begin in New York (July 8-11), then move to Cambridge (July 14-16) and London (July 17-20), and conclude in Dublin (July 21-22). The New York segment will include section and committee/divisional meetings, workshops, and programs on topics such as "Fundamentals of International Business Law for Non-experts." At Cambridge, participants will hear speakers on topics such as "Law at Cambridge -- 700 Years of History" and "Future of International Law in the New Millennium." In London, the ABA will sponsor programs on transatlantic mergers and acquisitions, jurisdiction in cyberspace, and doing business In the global economy of the 21st Century. In Dublin, members will attend a reception hosted by the Irish Foreign Ministry, as well as a mock trial at the Four Courts.

For further information, please contact American Bar Association, Meetings and Travel Department, 750 North Lake Shore Drive, Chicago, Illinois 60611; tel (312) 988-5870; fax (312) 988-6338.

"Orientation in USA Law"
University of California, Davis and Berkeley
July 9-August 5, 2000

Attendance at this program will give participant from other countries a better understanding of the theories and practices of the U.S. legal system. Participants engage in more than 150 hours of classes, seminars and on-site observations. Participants also enrich the program with diverse perspectives gleaned from their own legal systems.

Contact the International Law Programs, School of Law, University Extension Building, 1333 Research Park Drive, Davis, CA 95616-4852; Tel 530-757-8569; fax 530-757-8596; e-mail: law@unexmail.ucdavis.edu.

"Structuring an International Joint Venture" University of California, Davis August 7-18, 2000

This program is designed for experienced legal practitioners who wish to learn about complex international and U.S. business and legal transactions. Participants will engage in legal planning, problem solving, decision-making and negotiations as they relate to the formation, break-up and dissolution of a major multinational joint venture.

Contact the International Law Programs, School of Law, University Extension Building, 1333 Research Park Drive, Davis, CA 95616-4852; Tel 530-757-8569; fax 530-757-8596; e-mail: law@unexmail.ucdavis.edu.



Other Activities of Interest

CALENDAR

DATE	EVENT. LOCATION. SPONSOR	CONTACT
January 9- 16, 2000	New Zealand Law Society Rosana "Europe Pacific Legal Conference" Cortina D'Ampezzo, Italy	tel 6 1 -7-3236-2601 fax 6 1 -7-3210-1555 or 3358-4196 PO Box 843 New Farm, Qld 4005 Australia boccabella@)themis.com.au
January 27-28	International Bar Association "Arbitral Tribunals or State Courts who must defer to whom?" Zurich, Switzerland	IBA, 271 Regent Street London W1R 7PA tel 44-171 -629-1206 fax 44-171-409-0456 Confs@)int-bar.org
January 30 - February 1, 2000	New Zealand Law Society International Bar Association "South Pacific Conference" Nadi, Fiji	IBA, 271 Regent Street London W1R 7PA tel 44-171 -629-1206 fax 44-171-409-0456 Confs@)int-bar.org
February 18, 2000	International Bar Association "Third IBA International Arbitration Day" Hong Kong	IBA, 271 Regent Street London W1R 7PA tel 44-171 -629-1206 fax 44-171-409-0456 Confs@)int-bar.org
February 18, 2000	American Bar Association Section of International Law "Task Force on International Standards for Corrupt Practices" Santa Monica, California	ABA-SILP tel 800-285-222 I fax 312-988-5850
March 25 - April 2, 2000	ABA International Legal Exchange Trip to Brazil	Jesus V. Izquierdo International Projects Administrator tel 202-662-1670 fax 202-662-1669 jizquierdo@)staff.abanet.org
April 10-14, 2000	International Commission of Jurists International Bar Association "International Law Congress" Cyprus	Cathy Hodge tel 44-171-453-5414

April 12-15, 2000	American Bar Association Section of International Law 2000 Section Spring Meeting Washington, D.C	ASA-SILP tel 800-285-2221 fax 312-988-5850
May 15-19, 2000	WIPO "'Workshop for Mediators in Intellectual Property Disputes"	Francis Gurry tel 4122-338-9111 fax 4122-740-3700 arbiter.mail@wipo.int
May 2000	Inter-Pacific Bar Association "Tenth Annual General Meeting and Conference" Vancouver; B.C. Canada	IPBA Secretariat Ebisu Prime Square City 2F 1-1-7 Hiroo, Shibuya-ku Tokyo 150, Japan tel 81-3-3409-2381 fax 81-3-3409-2033
June 19-30, 2000	University of California-Davis University of Cologne "Third Annual International Commercial Building Law Seminar" Cologne, Germany	International Law Programs School of Law University Extension Building 1333 Research Park Dr. Davis, CA 95616-4852 tel 001 530-757-8569 fax 001 530-757-8596 law@unexmail.ucdavis.edu
July 8-22, 2000	American Bar Association Section of International Law Annual Meeting New York, London & Dublin	ASA-SILP tel 800-285-2221 fax 312-988-5850
August 6-10, 2000	World Association for Medical Law "13th World Congress on Medical Law" Helsinki, Finland	Dr. Arthur Lewis P.O. Box 10-114 The Terrace Wellington tel (04) 384-6616 fax (04) 384 6617
August 7-18, 2000	University of California, Davis "Structuring an International Joint Venture" Davis, California	International Law Programs School of Law University Extension Building 1333 Research Park Dr. Davis, CA 95616-4852 tel 001 530-757-8569 fax 001 530-757-8596 law@unexmail.ucdavis.edu